

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3453 OF 2024

- PETITIONERS** : 1. Shri Prakash S/o Manohar Senad,
Aged about 79 years,
Occupation: Retired,
R/o 1 Floor, Adwait Residency,
Khare Town, Dharampeth, Nagpur
(Maharashtra State)
2. Shri Deelip S/o Manohar Senad,
Aged about 75 years,
Occupation: Retired,
R/o Flat No. 203, PP Tower,
Manewada Chowk, Nagpur
(Maharashtra State)
3. Shri Avinash S/o Manohar Senad,
Aged about 71 years,
Occupation: Retired,
R/o 12 'Vaibhav', Tilak Nagar,
Amravati Road, Nagpur,
(Maharashtra State)
4. Sau. Ranuka W/o Sanjay Indurkar,
Aged about 61 years,
Occupation: Service,
R/o Bajiprabhu Nagar, Near House
of Dr. Buche, Nagpur
(Maharashtra State)

Vs.

- RESPONDENTS** : 1. Sudarshan S/o Vasantrao Senad,
Aged about 59 years,
Occupation: Service,
R/o 603, Pariwar Apartment, 28,
Corporation Colony, Nagpur
(Maharashtra State)
2. Sau. Varsha W/o Sharad Parwekar,
Aged about 77 years,
Occupation: Household,

R/o A-108, Premium Towers,
Phase-II, J.K. Hospital, Kolar,
Bhopal (Madhya Pradesh)

3. Sau. Vrinda W/o Jayant Kulkarni,
Aged about 65 years,
Occupation: Legal Practitioner,
R/o 4, Om Kailash Society,
Sarswat Marg, Dombivali (East),
District Thane (Maharashtra State)
4. Pardyumna S/o Vasantrao Senad,
Aged about 67 years,
Occupation: Retired,
R/o 6, Gopika Apartment,
Jyotinagar, Near Zawar Classes,
Aurangabad
5. Smt. Uttara W/o Udayan Senad,
Aged about 59 years,
Occupation: Household,
R/o 9, Vaishnav, Tilak Nagar,
Nagpur (Maharashtra State)
6. Ku. Sweta D/o Udayan Senad,
Aged about 29 years,
Occupation: Student,
R/o 9, Vaishnav, Tilak Nagar,
Nagpur (Maharashtra State)
7. Ku. Kanaka d/o Udayan Senad,
Aged about 22 years,
Occupation: Student,
R/o 9, Vaishnav, Tilak Nagar,
Nagpur (Maharashtra State)

Mr. A.V. Khare, Advocate for Petitioners
Mr. A.A. Choube, Advocate for Respondent No.1
Mr. S.S. Ghate, Advocate for Respondent No.3

CORAM

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: SACHIN S. DESHMUKH, J.

DATED

: 13.08.2025

JUDGMENT :

Rule. Rule made returnable forthwith. Heard finally with the consent of the parties at the stage of admission.

2. The order dated 29.02.2024 rendered by the learned Civil Judge, Senior Division, Nagpur, allowing the application for amendment in written statement is under challenge by way of present petition under Article 227 of the Constitution of India at the instance of the petitioners/original defendant Nos.1 to 4.

3. The parties to the petition are referred to by original status i.e. petitioners as “defendant nos.1 to 4” and respondent no.1 as "plaintiff" and respondent nos.2 to 7 as "defendant nos.5 to 10".

4. Special Civil Suit No. 643/2019 for declaration, partition and separate possession came to be instituted by respondent no.1/plaintiff. In response to the suit summons,

defendant nos.1 to 4 presented their written statement.

5. Thereafter, by presenting an application under Order VI rule 17 of the Code of Civil Procedure, defendant nos.1 to 4 sought amendment in written statement so as to incorporate the word `not' at two places, which would be a prefix to the word "partitioned". According to defendant nos.1 to 4, the same is absent in the written statement, as such, it was sought to be incorporated by way of proposed amendment. Coupled with the aforesaid amendment, even the defendants have sought incorporating specific pleadings in the written statement as indicated in the amendment application.

6. The plaintiff resisted the said application by submitting that the amendment application is by way of an after-thought and is filed with an intent to alter the nature of the pleadings, those are already incorporated in the written statement. The said mistake cannot be regarded as a typographical mistake as is claimed in the written statement by the defendants and it is an attempt to withdraw the earlier admission in the written statement.

7. The learned Trial Court heard the litigating sides and has accepted the contention put-forth on behalf of the defendants regarding the same as an inadvertent and typographical mistake. It was further observed that recording of evidence of the parties is yet to commence and the proposed amendment does not change/alter the nature of the defence raised. As such, learned Trial Court allowed the amendment application by imposing costs.

8. Aggrieved by the same, the petitioners/original defendants have approached this Court. It is submitted by learned counsel for the petitioners/defendants that Trial Court has ignored the impact of incorporating the expression 'not' as it has effect of withdrawing the admission which is already made and/or altering the nature of the written statement. It is further submitted by the learned counsel for the petitioners that while presenting the written statement, an admission was made in relation to the partition which had already taken place. However, the said admission in regard to partition is sought to be withdrawn by way of proposed amendment, as such, the Trial Court has not acted according to the settled

principles of law, therefore, prayed to quash and set aside the order allowing amendment. The learned counsel placed reliance on para 23 of the judgment of the Hon'ble Apex Court in the matter of ***Ram Niranjana Kajaria Vs. Sheo Prakash Kajaria and others, (2015) 10 SCC 203.***

9. Per-contra, learned counsel for the respondents/defendants justified the order submitting that obvious mistake was committed and the same is corrected by incorporating the said expression by virtue of proposed amendment. It is further submitted that the proposed amendment does not change the nature of the defence raised. It is further submitted that specific pleading was also not inadvertently incorporated in the original written statement and that no prejudice would cause to the plaintiffs, therefore, prayed for dismissal of the petition.

10. Heard the respective sides. Perused the record. It is well settled that the Court may allow either party to alter or amend the pleadings in such a manner and on such terms as may be just and all such amendments shall be made as may be

necessary for the purpose of determining the real question in controversy between the litigating sides. Undoubtedly, the first part of the proviso to Order VI Rule 17 is that the Court may at any stage of the proceedings allow either party to amend the pleadings; whereas, the later part is that such amendment shall be allowed for the purpose of determining the real question in controversy between the litigating sides. The proviso makes it abundantly clear that there is an obligation on the party applying for the amendment to offer an explanation to the satisfaction of the Court so as to render the conclusion that the proposed amendment in any manner does not withdraw any averment; alter the nature and resultant no prejudice is caused to the either side. Thus, the fact remains that it was for the Trial Court to ensure that the proposed amendment does not cause prejudice to the opposite side. The reliance placed by learned counsel for petitioner in case of ***Ram Niranjana Kajaria (supra)*** on para 23 applies to the present case, which is reproduced hereinbelow :-

"23. We agree with the position in Nagindas Ramdas and as endorsed in Gautam Sarup that a categorical admission made in the pleadings cannot be permitted to be withdrawn by way of an amendment. To that extent, the proposition of law that even an admission can be withdrawn, as held in Panchdeo Narain Srivastava, does not reflect the

correct legal position and it is overruled."

11. Perusal of the proposed amendment indicates that the attempt of the respondents/defendants to incorporate expression `not; has its own impact and perhaps withdrawal of the admission as has been rightly contended by learned counsel for the petitioners/defendant nos.1 to 4. Withdrawal of admission by way of proposed amendment has been ignored by the learned Trial Court and certainly same would cause prejudice to the petitioners. Therefore, the order rendered by the learned Trial Court is in ignorance of the above aspects. As such, it would be appropriate to relegate the parties to the Trial Court for reconsideration of the issue afresh in the light of the aforementioned observations. In the result, the following order is passed :-

ORDER

- (i) The petition is partly allowed.
- (ii) The order under challenge is quashed and set aside.
- (iii) The matter is remitted back to learned Trial Court for deciding it afresh and for passing appropriate orders in the light of the aforementioned observations.

(iv) With the aforesaid directions, the petitions is disposed of.

(v) Rule is partly made absolute in the above terms.

(vi) No order as to costs.

[SACHIN S. DESHMUKH, J.]